

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U-901-E) and
MidAmerican Energy Holdings Company for
Exemption Under Section 853(b) from the
Approval Requirements of Section 854(a) of the
Public Utilities Code with Respect to the
Acquisition of PacifiCorp by MidAmerican.

Application 05-07-010
(Filed July 15, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
PROVIDING NOTICE OF A PREHEARING CONFERENCE (PHC), REQUIRING
PHC STATEMENTS, SOLICITING BRIEFS ON PUB. UTIL. CODE § 854(a),
AND ADDRESSING CERTAIN PROCEDURAL MATTERS**

Notice of Prehearing Conference

A prehearing conference (PHC) is set for 9:30 a.m., on September 9, 2005, at the Commission's Hearing Room, 505 Van Ness Avenue, San Francisco, California. The PHC will address the scope and schedule of this proceeding, the need for evidentiary hearings, and other procedural matters that may arise.

Submittal of Written PHC Statements

Parties that wish to participate in this proceeding shall file and serve PHC statements no later than September 6, 2005. The PHC statements should address the following: (1) a list and description of issues, including the environmental issues discussed below; (2) the appropriate category for this proceeding; (3) the schedule for this proceeding, with specific milestones and dates; and (4) the need for evidentiary hearings. Any party that requests evidentiary hearings must provide the following in its PHC statement: (i) a list and description of the

specific factual issues to be addressed in the evidentiary hearings; and (ii) dates for exchanging written testimony, holding hearings, submitting briefs, etc.

Commission Authority to Impose Conditions Related to PacifiCorp's Klamath River Dams

Most of the protests assert that PacifiCorp's hydroelectric dams on the Klamath River have caused extensive environmental damage. In addition, some protests express concern about MidAmerican's willingness and ability to (1) pay the "enormous" cost of future environmental conditions that may be imposed on the operation of the dams, and (2) fulfill PacifiCorp's "legal and moral commitments" to Native Americans and other communities that draw sustenance from the Klamath River and its tributaries.

To help determine the scope of this proceeding, protestants shall provide the following in their PHC statements:

- The exact conditions related to the Klamath River and its tributaries that should be adopted by Commission.
- The Commission's authority (statutes, court cases, etc.) to impose each condition.
- An explanation of why MidAmerican, rather than PacifiCorp's ratepayers, will bear any of the costs associated with (1) future environmental conditions related to the Klamath River dams, and (2) PacifiCorp's "legal and moral commitments" to Native Americans and other communities.

Legal Briefs Regarding the Applicability of Pub. Util. Code § 854(a)

Many of the protests suggest that the Commission should use its authority under § 854(a) to review the proposed transaction and impose conditions on the transaction. On the other hand, PacifiCorp and MidAmerican state in

Application 05-07-010 that § 854(a) may not apply to the proposed transaction because PacifiCorp is not *organized* in California:

“The specific operative language of section 854(a) refers to the acquisition of “any public utility *organized* and doing business in this state.” While PacifiCorp clearly does business in California, it is not *organized* in California; rather, it is an Oregon corporation. For this reason, it would appear that the approval requirements of section 854 do not apply to PacifiCorp. While PacifiCorp has raised this jurisdictional question in at least two prior applications, and while the Commission has discussed the issue, it has not directly ruled on the question, choosing instead to grant requests for exemption under section 853(b). For this reason...the Commission should grant the Applicants’ request for exemption from the section 854 approval requirements.” (A.05-07-010, p. 2, Fn. 2. Italics in original. Citations omitted.)

To help determine the scope of this proceeding, parties are invited to brief the following issues:

- Whether § 854(a) applies to the proposed transition, even though PacifiCorp is not *organized* in California.
- Assuming § 854(a) does not apply, whether the Commission has authority under other statutes (e.g., §§ 701 and 851) to review the proposed transaction, approve or reject the proposed transaction, and impose conditions on the transaction.

Parties may file and serve opening briefs regarding the above issues no later than September 2, 2005, and reply briefs no later than September 7, 2005.

Procedural Matters

All those seeking to participate in this proceeding must submit an appearance form at the PHC. Those who plan to actively participate will be granted party status.

Hardcopies of all documents filed in this proceeding must be (i) filed at the Commission's Docket Office in accordance with Rule 2 of the Commission's Rules of Practice and Procedure (Rule), and (ii) provided to the Assigned Commissioner and the assigned Administrative Law Judge. An electronic copy of all documents filed in this proceeding must be served in accordance with the Electronic Service Protocols attached to this Ruling and Rules 2.3 and 2.3.1.

IT IS RULED that:

1. A prehearing conference (PHC) is set for 9:30 a.m., on September 9, 2005, at the Commission's Hearing Room, 505 Van Ness Avenue, San Francisco.

2. Parties that wish to participate in this proceeding shall file and serve PHC statements no later than September 6, 2005, and simultaneously shall provide copies of their PHC statements to the Assigned Commissioner and the assigned Administrative Law Judge (ALJ). The PHC statements shall address the matters identified in the body of this Ruling.

3. Parties may file and serve briefs regarding the issues identified in the body of this Ruling. Opening briefs are due no later than September 2, 2005. Reply briefs are due no later than September 7, 2005.

4. Hardcopies of all documents filed in this proceeding must be (i) filed at the Commission's Docket Office in accordance with Rule 2 of the Commission Rules of Practice and Procedure (Rule), and (ii) provided to the Assigned Commissioner and the assigned ALJ. An electronic copy of all documents filed in this proceeding must be served in accordance with the Electronic Service Protocols attached to this Ruling and Rules 2.3 and 2.3.1.

Dated August 26, 2005, at San Francisco, California.

/s/ TIMOTHY KENNY by LTC
Timothy Kenney
Administrative Law Judge

ATTACHMENT

ELECTRONIC SERVICE PROTOCOLS

1. Service of Documents by Electronic Mail

All participants that provide an en electronic mail (email) address shall send/receive documents by email to/from other participants that have provided an email address. Paper copies of documents shall be sent and received with respect to participants that have not provided an email address.

Participants that provide an email address shall always provide **both** a hardcopy and an electronic copy of the documents to the Assigned Commissioner and the assigned Administrative Law Judge (ALJ).

2. Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c). However, paper copies of that document shall be served on the assigned ALJ and Assigned Commissioner.

3. Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules for the tendering of documents for filing. Documents for filing must be tendered in paper form as described in Rule 2, *et seq.*

4. Electronic Service Standards

As an aid to review of documents served electronically, participants should follow these procedures:

- Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).
- Attach the document file to an electronic note.

- In the subject line of the note, identify the proceeding number, the party sending the document, and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word.)

If the email is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means, such as overnight delivery, is mutually agreed upon).

Parties should exercise good judgment regarding email service. For example, if a particularly complex matrix or table is attached to a document mailed electronically, and it can be reasonably foreseen that many parties will have difficulty printing the matrix or table, the sender should also serve paper copies by U.S. mail and indicate that in the electronic note.

5. Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of email addresses, click on Proceedings, then List of Open Proceedings, then the month and year of the proceeding (July 2005 for this proceeding), scroll to find the proceeding number (A.05-07-010), and click on "List." To view and copy the email addresses for a service list, download the comma-delimited file and copy the column containing the email addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the

list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

6. Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation, parties should use the pagination found in the original document.

(END OF ATTACHMENT)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Providing Notice of a Prehearing Conference (PHC), Requiring PHC Statements, Soliciting Briefs on Pub. Util. Code § 854(a), and Addressing Certain Procedural Matters on all parties of record in this proceeding or their attorneys of record.

Dated August 26, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.